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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 CHRISTOPHER KIRKPATRICK,
12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN, Acting
15 Commissioner of the Social
16 Security Administration,
Defendant.

Case No. EDCV 13-02034 SS

MEMORANDUM DECISION AND ORDER

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18
19
20 **I.**

21 **INTRODUCTION**
22

23 Christopher Kirkpatrick ("Plaintiff") seeks review of the
24 final decision of the Commissioner of the Social Security
25 Administration (the "Commissioner" or the "Agency") finding him
26 eligible for Disability Insurance Benefits and Supplemental
27 Security Income from January 22, 2011 through February 16, 2012,
28 but denying him those benefits after February 16, 2012 because of

1 medical improvement. The parties consented, pursuant to 28
2 U.S.C. § 636(c), to the jurisdiction of the undersigned United
3 States Magistrate Judge. For the reasons stated below, the
4 decision of the Commissioner is AFFIRMED.

5
6 **II.**

7 **PROCEDURAL HISTORY**

8
9 Plaintiff applied for Title II Disability Insurance Benefits
10 ("DIB") and Title XVI Supplemental Security Income ("SSI") on
11 January 31, 2011 and February 3, 2011 respectively.
12 (Administrative Record ("AR") 129, 136). In both applications,
13 Plaintiff alleged a disability onset date of January 22, 2011.
14 (Id.). The Agency initially denied Plaintiff's applications on
15 March 8, 2011, (AR 62-66), and upon reconsideration on June 24,
16 2011. (AR 60-61). On August 5, 2011, Plaintiff requested a
17 hearing before an Administrative Law Judge ("ALJ"). (AR 73).
18 Plaintiff testified before ALJ Marti Kirby on September 7, 2012.
19 (AR 32-57). The ALJ subsequently issued a partially favorable
20 decision on September 25, 2012. (AR 10-26). The ALJ found that
21 Plaintiff was disabled within the meaning of the Social Security
22 Act from January 22, 2011 to February 16, 2012. (AR 26). The
23 ALJ concluded, however, that Plaintiff's disability ended on
24 February 17, 2012 due to medical improvement. (AR 10-11). On
25 October 10, 2012, Plaintiff requested review of the ALJ's
26 decision, which the Appeals Council denied on September 18, 2013.
27 (AR 1-5). Plaintiff filed the instant action on November 15,
28 2013.

1 **A. Medical History: Treating And Examining Physicians' Findings**

2
3 **1. Physical Condition**

4
5 On January 22, 2011, Plaintiff presented to the Desert
6 Regional Medical Center ("Desert Regional") in Palm Springs,
7 California with fatigue, malaise, a lack of energy and weight
8 loss. (AR 235). On January 25, 2011, Plaintiff underwent a left
9 inguinal lymph node biopsy which revealed that Plaintiff had
10 Stage IV Hodgkin's lymphoma with bone marrow involvement. (AR
11 241-44, 275). Plaintiff commenced chemotherapy in early 2011 and
12 started taking Coumadin for "bilateral upper extremity DVT caused
13 by his malignancy[.]" (AR 275). On March 9, 2011, Plaintiff's
14 physician at Desert Regional's Comprehensive Cancer Center
15 ("Cancer Center"), Dr. Murthy Andavolu, reported that Plaintiff
16 was "doing well," having regained his appetite, and gained a
17 "significant amount" of weight. (Id.). Plaintiff reported no
18 nosebleeds or gum bleeding, no blood in his stool, no fevers or
19 night sweats, no neck pain or swelling, no abdominal pain, and no
20 leg swelling. (Id.).
21

22 On March 23, 2011, Plaintiff saw Dr. Andavolu for a follow-
23 up visit. (AR 277). Plaintiff reported continued weight gain,
24 and his exam was otherwise unremarkable. (Id.). Plaintiff
25 remained on Coumadin for his DVT and continued to undergo
26 chemotherapy. (Id.). Plaintiff returned to Dr. Andavolu on
27 April 13, 2011 after completing his third cycle of chemotherapy.
28 (AR 279). Plaintiff reported no complaints and continued to

1 receive treatment for his DVT. (Id.). On May 4, 2011, nurse
2 practitioner Cathy Warne conducted a follow-up examination of
3 Plaintiff. (AR 282). Plaintiff complained of itchy eyes, nasal
4 congestion, and tenderness in his mouth. (Id.). He reported
5 purposeful weight loss, but no headaches, fevers, night sweats,
6 abdominal pain, chest pain, swelling, or shortness of breath.
7 (Id.). Nurse Warne reported that Plaintiff "tolerated [his]
8 chemotherapy well and had a good clinical response." (Id.).
9 Plaintiff's PET-CT scan showed a "complete response." (Id.) Dr.
10 Andavolu confirmed the nurse's findings in an additional report
11 and noted he increased Plaintiff's Coumadin to 7.5 mg daily two
12 days earlier. (AR 284).

13
14 On May 11, 2011, Plaintiff underwent a bone marrow biopsy.
15 (AR 286). Plaintiff tolerated the procedure well, (id.), and a
16 microscopic examination of his biopsied bone marrow revealed no
17 evidence of Hodgkin's lymphoma. (AR 290). On June 1, 2011,
18 Plaintiff reported muscle and bone aches, but no other remarkable
19 symptoms. (AR 467). Dr. Andavolu noted on June 30, 2011 that
20 Plaintiff continued to gain weight, his groin lymphadenopathy had
21 disappeared, and he reported no chest or abdominal pain. (AR
22 466). Plaintiff continued to do well throughout July 2011 and
23 showed signs of near-complete resolution of his Hodgkin's
24 lymphoma. (AR 464). Plaintiff also improved throughout August
25 2011, showing no signs of fever, swelling, weight loss, chest
26 pain, abdominal pain, or distress. (AR 462). Plaintiff
27 continued to tolerate his chemotherapy well throughout September
28 2011. (AR 460). After briefly increasing Plaintiff's Coumadin

1 to 10 mg daily in late August 2011, Dr. Andavolu lowered
2 Plaintiff's dose back to 7.5 mg daily on September 22, 2011. (AR
3 462, 460).

4
5 On October 3, 2011, Plaintiff visited Dr. Apollo Gulle in
6 Yucca Valley, California to discuss his lab results. (AR 342).
7 Plaintiff reported no fatigue, fever, night sweats, coughing,
8 chest pain, irregular heartbeat, abdominal pain, constipation,
9 diarrhea, or vomiting. (Id.). Plaintiff was not under any
10 apparent distress, appeared well-nourished, and well-developed.
11 (Id.). Plaintiff's lungs were clear, his heart rhythm was
12 regular, his abdomen was soft and non-tender, and his extremities
13 showed no signs of edema or cyanosis. (Id.). Dr. Gulle noted
14 that Plaintiff's cancer was in remission and his DVT in the upper
15 extremities remained chronic. (Id.). Dr. Gulle prescribed
16 Plaintiff Fenofibrate (160 mg) and Nexium (40 mg), and modified
17 his Coumadin dosage to 5 mg. (AR 343). At the time of his
18 visit, Plaintiff weighed 234 pounds. (AR 342).

19
20 On October 19, 2011, Plaintiff visited Dr. Andavolu for a
21 follow-up appointment. (AR 458). Dr. Andavolu reported that
22 Plaintiff was doing well after completing his last cycle of
23 chemotherapy on October 14, 2011. (Id.).

24
25 On November 22, 2011, Plaintiff returned to Dr. Gulle for a
26 follow-up examination. (AR 340). Plaintiff reported itchy and
27 dry feet, but no other remarkable symptoms. (Id.). Dr. Gulle
28 prescribed Lidex solution (.05%) for Plaintiff's skin condition

1 and Plaintiff continued to take Fenofibrate, Coumadin and Nexium.
2 (Id.). At the time of his visit, Plaintiff weighed 237 pounds.
3

4 On December 8, 2011, Plaintiff again presented with no signs
5 of fatigue, fever, night sweats, distress, respiratory problems,
6 or any other remarkable complications. (AR 338). Plaintiff
7 reported chest congestion, an itchy throat, a runny nose and body
8 aches. (Id.). Dr. Gulle prescribed Plaintiff amoxicillin (500
9 mg) in addition to his regular medications. (AR 339). Plaintiff
10 weighed 236 pounds at the time of his examination. (AR 338).
11

12 Plaintiff returned to Dr. Gulle on January 16, 2012
13 complaining of a swollen right knee due to an attempt to return
14 to work as a construction worker. (AR 336). Dr. Gulle noted
15 that although Plaintiff experienced swelling and pain in his
16 right knee, x-rays of the knee were unremarkable and Plaintiff
17 reported no history of trauma, weakness or numbness. (Id.). Dr.
18 Gulle diagnosed Plaintiff with a sprained right knee and
19 recommended treatment with NSAIDs, ice and a wearable
20 immobilizer. (Id.).
21

22 On January 18, 2012, Plaintiff returned to Dr. Andavolu.
23 (AR 457). Dr. Andavolu noted that Plaintiff's cancer was in
24 complete remission, although his DVT persisted. (Id.).
25 Plaintiff complained of an injury to his right knee, which
26 required the use of crutches. (Id.). Plaintiff reported no
27 additional complaints. (Id.).
28

1 On February 1, 2012, Plaintiff visited Dr. Jeffrey Seip in
2 Yucca Valley for a knee examination. (AR 422). Plaintiff
3 reported mild joint pain and denied any locking, popping, or
4 other mechanical symptoms of the right knee. (Id.). Plaintiff
5 also described a stable and nonprogressive pattern of symptoms.
6 (Id.). Dr. Seip concluded Plaintiff was not at risk of falling,
7 diagnosed Plaintiff with a sprain of the right lateral collateral
8 knee ligament, and referred Plaintiff to physical therapy. (AR
9 423).

10
11 At a February 8, 2012 physical therapy session, Plaintiff
12 reported mild to moderate knee pain, which the physical therapist
13 noted was "significantly decrease[d]" by his knee brace. (AR
14 359). The physical therapist began Plaintiff on a treatment plan
15 that included therapeutic and strengthening exercises, electric
16 stimulation, and hot/cold packs, with a frequency of one
17 treatment per day, twice a week for six weeks. (AR 360).

18
19 Plaintiff returned to Dr. Andavolu on February 16, 2012 for
20 a follow-up visit regarding Plaintiff's lymphoma. (AR 451). Dr.
21 Andavolu reiterated that Plaintiff was doing well and noted that
22 Plaintiff had stopped taking Coumadin for his DVT two weeks
23 earlier. (AR 451). Plaintiff's right knee showed signs of
24 swelling and tenderness. (AR 452).

25
26 On February 20, 2012, Plaintiff visited Dr. Chahat Thakur in
27 Yucca Valley for a variety of lab tests related to his lymphoma.
28 (AR 419). There, Plaintiff reported that he was still taking

1 Coumadin at that time, in contrast to what Dr. Andavolu noted
2 about Plaintiff's Coumadin dosage four days earlier. (AR 420).

3
4 Plaintiff also listed Coumadin as a current medication the
5 following day, during a follow-up appointment for his knee. (AR
6 416). Nurse practitioner Hector Alvarez reported Plaintiff had
7 no pain during several knee examinations, but did note lateral
8 joint line tenderness during an exam of Plaintiff's right
9 meniscus. (AR 418). Plaintiff underwent a procedure to drain
10 the right knee joint of fluid and reported no complications
11 afterwards. (Id.). Nurse Alvarez ordered Plaintiff to continue
12 with physical therapy. (Id.).

13
14 On March 5, 2012, Plaintiff returned to Dr. Thakur for
15 further lab tests, this time to evaluate Plaintiff for
16 hypertriglyceridemia. (AR 413). Dr. Thakur noted Plaintiff was
17 taking Lopid for the condition, and had been complying with the
18 treatment and taking his medicine as directed. (Id.). Plaintiff
19 denied experiencing any symptoms related to hypertriglyceridemia.
20 (Id.). Dr. Thakur prescribed Tricor (145 mg), to be taken once
21 daily for 30 days, with two refills following. (AR 414).
22 Plaintiff did not list Coumadin as one of his current medications
23 at this visit. (Id.). Plaintiff weighed 246 pounds at the time
24 of his examination. (Id.).

25
26 Plaintiff returned to Nurse Alvarez on March 6, 2012 for a
27 follow-up appointment on his knee and was referred for more
28 physical therapy. (AR 410). During sessions held on March 14

1 and March 29, 2012, Plaintiff continued to report mild to
2 moderate knee pain, and the physical therapist remarked that
3 Plaintiff was making slow progress at both sessions. (AR 362).
4 Plaintiff was discharged from physical therapy following the
5 March 29, 2012 session. (AR 363).

6
7 On March 27, 2012, Plaintiff visited Dr. Navid Zenooz for a
8 chest x-ray and CT scan of his abdomen and pelvis after
9 experiencing abdominal pain. (AR 356, 428). Dr. Zenooz reported
10 that the CT scan revealed Plaintiff was suffering from umbilical
11 and bilateral inguinal hernias. (AR 356). Dr. Zenooz otherwise
12 reported unremarkable and normal findings from both examinations.
13 (AR 356, 428). The next day, Dr. Thakur referred Plaintiff to a
14 general surgeon for the hernias. (AR 406).

15
16 On April 10, 2012, Plaintiff visited Dr. Renato Guzman in
17 Yucca Valley following Dr. Thakur's referral. (AR 399). Dr.
18 Guzman noted that both of Plaintiff's hernias "have been present
19 for years," and that "[t]he umbilical hernia only bothers
20 [Plaintiff] when he lays on his stomach. The inguinal hernias are
21 asymptomatic." (Id.). Dr. Guzman's notes reveal no other
22 assessments or orders for further treatment. (AR 399-400).
23 Plaintiff also did not list Coumadin as one of his current
24 medications. (AR 400). Plaintiff weighed 241 pounds at the time
25 of his examination with Dr. Guzman. (Id.).

26
27 Plaintiff returned to Nurse Alvarez on May 9, 2012 for a
28 follow-up appointment on his knee. (AR 393). Nurse Alvarez

1 referred Plaintiff to an orthopedist and also ordered an x-ray of
2 Plaintiff's knee. (AR 395). Plaintiff weighed 236 pounds at the
3 time of his visit with Nurse Alvarez. (AR 394).

4
5 On May 17, 2012, Plaintiff returned to Dr. Andavolu for a
6 follow-up appointment regarding his lymphoma. (AR 445). Dr.
7 Andavolu reported Plaintiff had a high red blood cell count,
8 stemming from Plaintiff's history of smoking, but noted that
9 Plaintiff was doing well otherwise and his lymphoma was in
10 "complete remission." (Id.). Dr. Andavolu also commented that
11 Plaintiff admitted to smoking marijuana. (Id.). Plaintiff was
12 ordered to undergo lab tests and a PET-CT scan and follow up with
13 Dr. Andavolu in another three months. (Id.).

14
15 On May 29, 2012, Plaintiff saw Nurse Alvarez for a pre-
16 operation appointment on his knee. (AR 386). Plaintiff reported
17 moderate pain in the knee. (Id.). Nurse Alvarez noted Plaintiff
18 had a family history of osteoarthritis. (Id.). Plaintiff
19 described joint stiffness, as well as locking, popping, and
20 giving away of his knee. (Id.). Plaintiff told Nurse Alvarez
21 these symptoms occurred for less than fifteen minutes upon waking
22 up each morning, but later said his symptoms occurred several
23 times daily. (Id.). Plaintiff estimated he could walk five to
24 ten blocks, walk up stairs normally, and walk down stairs with a
25 rail. (Id.). Plaintiff denied the need of an assistive device
26 during any of these estimated activities. (Id.). Plaintiff
27 weighed 233 pounds at the time of his visit with Nurse Alvarez,
28 and did not report Coumadin as one of his current medications.

1 (AR 387-388). Nurse Alvarez prescribed Plaintiff thirty tablets
2 of Norco, a hydrocodone/acetaminophen medication, with no
3 refills. (AR 388).

4
5 Plaintiff underwent arthroscopic surgery on his right knee
6 on June 5, 2012 in Yucca Valley. (AR 365). Dr. Seip performed
7 the surgery and made a post-operation diagnosis of Grade IV
8 cartilage change to the majority of Plaintiff's right knee joint.
9 (Id.). Dr. Seip reported no other complications from the
10 procedure. (Id.).

11
12 Plaintiff returned to Nurse Alvarez on June 12, 2012 for a
13 post-operation appointment. (AR 383). Nurse Alvarez noted
14 "[Plaintiff's] course has improved," and that despite Plaintiff's
15 family history of osteoarthritis, Plaintiff's personal medical
16 history was negative for the condition. (Id.). Nurse Alvarez
17 also reported that Plaintiff had been prescribed Vicodin
18 following the surgery. (Id.). Nurse Alvarez reported similar
19 findings one week later on June 19, 2012, and ordered Plaintiff
20 to visit Dr. Seip to remove Plaintiff's remaining sutures. (AR
21 379-381).

22
23 On June 20, 2012, Plaintiff visited Dr. Thakur to treat a
24 toenail fungal infection that Plaintiff claimed had been
25 bothering him for about six days. (AR 376). Dr. Thakur
26 confirmed the infection on the right toenail and prescribed
27 Plaintiff antibiotics. (AR 378).

1 Plaintiff saw Dr. Thakur again on June 27, 2012 for a
2 follow-up appointment regarding Plaintiff's hypertriglyceridemia.
3 (AR 373). Plaintiff denied experiencing any symptoms related to
4 the condition and Dr. Thakur noted Plaintiff's overall compliance
5 with the treatment plan. Dr. Thakur prescribed Plaintiff Crestor
6 (20 mg), to be taken once daily for 30 days with no refills. (AR
7 375).

8
9 On July 2, 2012, Plaintiff visited Nurse Alvarez for a
10 follow-up appointment on Plaintiff's knee. (AR 370). During the
11 patellofemoral and meniscal exams, Nurse Alvarez noted some
12 tenderness in Plaintiff's medial and lateral joint lines. (AR
13 372). Nurse Alvarez prescribed Plaintiff Naprosyn, a naproxen
14 medication, to be taken twice daily for 10 days. (Id.).

15
16 Plaintiff visited Dr. Renato Guzman in Yucca Valley on July
17 3, 2012 to address his toenail infection. (AR 368). Dr. Guzman
18 reported no infection, but that examinations revealed ingrown
19 toenails on both of Plaintiff's big toes, and recommended
20 surgery. (AR 369). However, there is no other evidence in the
21 medical records indicating Plaintiff has undergone any such
22 procedure.

23
24 On August 14, 2012, Plaintiff visited Dr. Sumit Mahajan in
25 Yucca Valley for an appointment regarding Plaintiff's peripheral
26 neuropathy. (AR 635). Dr. Mahajan notes the condition was
27 "diagnosed [six] months ago." (Id.). Dr. Mahajan also remarked
28 that "[t]he course has been progressively worsening" and is of

1 "moderate intensity." (Id.). Plaintiff reported symptoms that
2 occurred several times daily, were aggravated by walking and
3 exertion, and were relieved by "lying perfectly still." (Id.).
4 Dr. Mahajan prescribed Plaintiff thirty tablets of Neurontin (300
5 mg) to control the nerve pain. (AR 637).

6
7 Plaintiff saw Dr. Thakur on August 20, 2012 after
8 experiencing shortness of breath, which Dr. Thakur noted had
9 bothered Plaintiff "for the past [two] weeks." (AR 632).
10 Plaintiff reported an associated cough symptom but denied any
11 other symptoms. (Id.). Dr. Thakur noted Plaintiff's CT scan of
12 his chest was negative for a pulmonary embolism and that all
13 other examinations were unremarkable. (AR 643, 633-634).
14 However, because of Plaintiff's history of cancer, Dr. Thakur
15 recommended Plaintiff visit Dr. Andavolu two days later for a
16 follow-up appointment. (AR 634). Plaintiff later testified
17 before the ALJ that he never received a diagnosis from the August
18 20, 2012 visit but was eventually prescribed an inhaler. (AR
19 42).

20 21 **2. Mental Condition**

22
23 On January 23, 2012, Plaintiff visited Morongo Basin Mental
24 Health Services ("Morongo Basin") in Yucca Valley. (AR 349).
25 Plaintiff reported experiencing stress and anxiety due to
26 unemployment, his cancer diagnosis, and finances. (Id.).
27 Plaintiff was treated by examining clinician Dana Conner and Dr.
28 Paul True, Psy. D. (AR 349, 354). Ms. Conner reported Plaintiff

1 also complained of irritability, trouble sleeping, short term
2 memory lapses, "lash[ing] out if confronted with too many tasks,"
3 and emotions that "change drastically." (Id.). However, later
4 in the same report, boxes were checked indicating Plaintiff had
5 neither sleeping nor eating problems. (AR 351). Plaintiff
6 reported no other interpersonal impairment. (AR 349). Plaintiff
7 used marijuana a few times a week, but "ceased using speed 15
8 years ago." (AR 350).

9
10 Dr. True diagnosed Plaintiff with chronic adjustment
11 disorder with anxiety, cannabis dependence without physiological
12 dependence, memory impairment due to chemotherapy, and chronic
13 pain. (AR 354). Dr. True also diagnosed Plaintiff with
14 hypercholesterolemia, digestive disorders, ulcers, inadequate
15 social support, and occupational problems. (Id.). The doctors
16 also concluded Plaintiff was not a danger to himself or others.
17 (AR 349). They ruled Plaintiff's appearance and behavior as
18 "appropriate/normal" and Plaintiff's mood as "depressed." (AR
19 352). The doctors recommended that Plaintiff begin counseling.
20 (Id.).

21
22 On May 14, 2012, Plaintiff visited Dr. Thakur to evaluate
23 Plaintiff for depression. (AR 390). Dr. Thakur noted this
24 appointment was a "routine follow-up" and that "[t]he diagnosis
25 of depression was made [ten] years ago." (Id.). Plaintiff
26 reported a "mild degree of depression" with "fairly infrequent"
27 symptoms to Dr. Thakur. (Id.). Dr. Thakur also noted that
28 "[c]urrent medications include an antidepressant," but Plaintiff

1 did not report any such medications at the May 14, 2012
2 appointment or at other doctor visits leading up to May 14, such
3 as the appointments on April 11 and May 9, 2012. (AR 391, 397,
4 394). Dr. Thakur prescribed Plaintiff thirty tablets of Lexapro,
5 to be taken once daily, with no refills. (AR 392).

6
7 Plaintiff subsequently reported Lexapro as a current
8 medication at doctor visits on May 29 and June 12, 2012. (AR
9 387, 384). Plaintiff then did not list Lexapro as a current
10 medication during visits on June 19, June 20, or June 27, 2012.
11 (AR 380, 377, 374). However, Plaintiff again listed Lexapro as
12 one of his medications during doctor visits in August, 2012. (AR
13 638, 636, 633).

14 15 IV.

16 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

17
18 To qualify for disability benefits, a claimant must
19 demonstrate a medically determinable physical or mental
20 impairment that prevents her from engaging in substantial gainful
21 activity and that is expected to result in death or to last for a
22 continuous period of at least twelve months. Reddick v. Chater,
23 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C.
24 § 423(d)(1)(A)). The impairment must render the claimant
25 incapable of performing the work she previously performed and
26 incapable of performing any other substantial gainful employment
27 that exists in the national economy. Tackett v. Apfel, 180
28

1 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.
2 § 423(d)(2)(A)).

3
4 To decide if a claimant is entitled to benefits, an ALJ
5 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920.
6 The steps are:

7
8 (1) Is the claimant presently engaged in substantial
9 gainful activity? If so, the claimant is found
10 not disabled. If not, proceed to step two.

11 (2) Is the claimant's impairment severe? If not, the
12 claimant is found not disabled. If so, proceed to
13 step three.

14 (3) Does the claimant's impairment meet or equal one
15 of the specific impairments described in 20 C.F.R.
16 Part 404, Subpart P, Appendix 1? If so, the
17 claimant is found disabled. If not, proceed to
18 step four.

19 (4) Is the claimant capable of performing his past
20 work? If so, the claimant is found not disabled.
21 If not, proceed to step five.

22 (5) Is the claimant able to do any other work? If
23 not, the claimant is found disabled. If so, the
24 claimant is found not disabled.

25
26 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
27 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20
28 C.F.R. §§ 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

The claimant has the burden of proof at steps one through four, and the Commissioner has the burden of proof at step five. Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an affirmative duty to assist the claimant in developing the record at every step of the inquiry. Id. at 954. If, at step four, the claimant meets her burden of establishing an inability to perform past work, the Commissioner must show that the claimant can perform some other work that exists in "significant numbers" in the national economy, taking into account the claimant's residual functional capacity ("RFC"), age, education, and work experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do so by the testimony of a vocational expert or by reference to the Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P, Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional (strength-related) and non-exertional limitations, the Grids are inapplicable and the ALJ must take the testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988)).

V.

THE ALJ'S DECISION

The ALJ employed the five-step sequential evaluation process and concluded that Plaintiff was initially under a disability within the meaning of the Social Security Act from January 22,

1 2011 through February 16, 2012. (AR 10). At step one, the ALJ
2 found that Plaintiff had not engaged in substantial gainful
3 employment since January 22, 2011. (AR 14).

4
5 At step two, the ALJ found that from January 22, 2011
6 through February 16, 2012, Plaintiff had the severe impairments
7 of Stage IV Hodgkin's lymphoma with bone marrow involvement,
8 currently in remission after eight months of chemotherapy, but
9 with complications due to DVT in both shoulders and residual
10 peripheral neuropathy; depression; and obesity. (AR 14).

11
12 At step three, the ALJ found that during this period,
13 Plaintiff did not have an impairment or combination of
14 impairments that met or medically equaled one of the listed
15 impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR
16 15).

17
18 The ALJ then found that Plaintiff was "unable to sustain
19 full time work activity on a regular and continuing basis because
20 of chronic fatigue, and the frequency and effect of medical
21 treatment." (AR 16). In making this finding, the ALJ noted that
22 the objective medical evidence supported the credibility of
23 Plaintiff's testimony, as well as written statements from
24 Plaintiff and his wife, regarding the severity of his symptoms
25 and limitations. (AR 17-18).

26
27 Consequently, the ALJ gave little weight to the opinions of
28 the non-examining State physicians at the initial and

1 reconsideration levels, who "did not have the benefit of
2 considering additional evidence that was only available after
3 they assessed [Plaintiff], including treatment notes and
4 [Plaintiff's] testimony at the hearing," and who thereby failed
5 to "adequately consider [Plaintiff's] subjective allegations."
6 (AR 18-19). In particular, the ALJ noted that the initial non-
7 examining physician, Dr. Vu, expected Plaintiff "to be
8 functionally nonsevere after 12 months from the [alleged onset
9 date]," and Dr. Cooper, the non-examining physician at the
10 reconsideration level, expected that after the same 12 month
11 period, Plaintiff "would be able to perform work at the light
12 exertional level . . . [and] occasionally perform postural
13 activities." (AR 18).

14
15 At step four, the ALJ determined that Plaintiff could not
16 perform his relevant past work as a construction worker. (AR
17 19). At step five, the ALJ considered Plaintiff's age,
18 education, work experience and RFC and determined that "there
19 were no jobs that existed in significant numbers in the national
20 economy that [Plaintiff] could have performed." (Id.). The ALJ
21 noted that "[Plaintiff's] limitations prevented the performance
22 of sustained work-related physical activities in a work setting
23 on a regular and continuing basis at any exertional level." (AR
24 20). Thus, the ALJ found after the five-step evaluation that
25 Plaintiff was disabled, as defined by the Social Security Act,
26 from January 22, 2011 through February 16, 2012. (AR 20).

1 However, the ALJ then determined that beginning February 17,
2 2012, Plaintiff experienced medical improvement that increased
3 Plaintiff's RFC, despite retaining all pre-existing impairments.
4 (AR 21-22). Thus, because Plaintiff's increased RFC improved
5 Plaintiff's ability to work, the ALJ found that Plaintiff's
6 disability ended as of February 17, 2012. (AR 21). The ALJ then
7 provided the following description of Plaintiff's increased RFC:

8
9 [Plaintiff] can lift and/or carry 20 pounds
10 occasionally and 10 pounds frequently; he can stand
11 and/or walk for six hours out of an eight-hour workday
12 with regular breaks; he can sit for six hours out of an
13 eight-hour workday with regular breaks; he can
14 alternate between sitting and standing at one hour
15 intervals; he can frequently perform postural
16 activities; he is precluded from climbing ladders,
17 ropes, or scaffolds; he is precluded from working at
18 heights, around moving machinery or other hazards; he
19 is precluded from performing jobs that requires
20 hypervigilance or intense concentration on a particular
21 task; and he is precluded from concentrated exposure to
22 extreme temperatures.

23
24 (AR 22). In contrast to the ALJ's previous disability finding,
25 the ALJ found the objective medical evidence inconsistent with
26 both Plaintiff's testimony and the written statements from
27 Plaintiff and his wife regarding the intensity, persistence, and
28 limiting effects of Plaintiff's symptoms since February 17, 2012.

1 (AR 22). As a result, the ALJ found Plaintiff's subjective
2 complaints were "less than fully credible." (AR 24.)

3
4 More specifically, the ALJ took issue with Plaintiff's
5 statements regarding the severity of the three main impairments
6 allegedly limiting Plaintiff's ability to work after February 16,
7 2012: the ongoing effects of Plaintiff's June 5, 2012 surgery on
8 his right knee; Plaintiff's severe residual fatigue and weakness
9 upon completion of chemotherapy; and Plaintiff's ongoing
10 depression. (AR 22-24).

11
12 Regarding Plaintiff's knee surgery, the ALJ disagreed with
13 Plaintiff's contention that the surgery failed. (AR 22, 43).
14 The ALJ noted Plaintiff's gait was normal while moving about the
15 hearing room and that Plaintiff did not use an assistive device
16 for ambulation. (AR 22). Furthermore, Plaintiff admitted to the
17 ALJ during the hearing that he could stand and/or walk for over
18 an hour and vacuum at home. (Id.). The ALJ also noted that
19 Plaintiff admitted at a post-operative appointment that he could
20 walk five to ten blocks, climb stairs normally, and had only
21 occasional, moderate pain in his knee. (Id.).

22
23 Similarly, the ALJ concluded the objective evidence for
24 Plaintiff's progress following chemotherapy did not support
25 Plaintiff's allegations of continued severe residual fatigue and
26 weakness. (Id.). The ALJ found no evidence in the medical
27 records that Plaintiff ever reported such symptoms to a physician
28 during a follow-up appointment, but notes that Plaintiff did in

1 fact on several occasions deny having any ill effects. (Id.).
2 Further, the ALJ pointed to diagnostic testing that "revealed
3 unremarkable findings" during this period. (Id.).
4

5 Lastly, the ALJ found no support in the record for claims
6 that Plaintiff and his wife made regarding the severity of
7 Plaintiff's depression. (Id.). The ALJ noted that "on several
8 occasions, [Plaintiff] described his depression as 'mild,' and
9 stated that his symptoms are infrequent," and that Plaintiff
10 admitted to not receiving ongoing mental health treatment beyond
11 an initial prescription for medication. (Id.). The ALJ also
12 acknowledged the lack of any evidence that Plaintiff was
13 hospitalized for mental impairments. (AR 22-23). For these
14 reasons, the ALJ found testimony from Plaintiff's wife that
15 Plaintiff continued to experience problems with his memory,
16 fatigue, and pain to be lacking credibility in light of the lack
17 of clinical or diagnostic medical evidence. (AR 23).
18

19 In finding the Plaintiff's RFC had increased, the ALJ gave
20 some weight to the opinions of the State non-examining physicians
21 at the reconsideration level, who concluded that "beginning on
22 January 22, 2012, [Plaintiff] could perform work at the light
23 exertional level; he could occasionally perform postural
24 activities; and he was precluded from concentrated exposure to
25 pulmonary irritants and temperature extremes." (AR 24).
26 However, the ALJ determined that while "this opinion is generally
27 consistent with the totality of the medical evidence . . . this
28

1 opinion does not adequately consider [Plaintiff's] obesity or his
2 subjective allegations of knee pain and residual fatigue."

3
4 Taking Plaintiff's obesity and subjective allegations into
5 consideration, the ALJ assigned Plaintiff a more restrictive, and
6 thus more favorable, RFC to accommodate the deficiencies the ALJ
7 perceived in the opinions of the non-examining physicians. (AR
8 22, 24). Returning to step four, the ALJ determined that even
9 with an increased RFC, Plaintiff was still unable to perform his
10 relevant past work as a construction worker. (AR 24-25). At
11 step five, the ALJ considered Plaintiff's age, education, work
12 experience, and increased RFC. (AR 25). Based in part on the
13 testimony of a vocational expert, the ALJ found that there were
14 jobs existing in significant numbers in the national economy that
15 Plaintiff could perform as of February 17, 2012, such as a
16 cashier, garment sorter, and production solderer. (Id.).
17 Accordingly, the ALJ determined that Plaintiff was no longer
18 disabled as of February 17, 2012. (Id.).

19 20 VI.

21 STANDARD OF REVIEW

22

23 Under 42 U.S.C. § 405(g), a district court may review the
24 Commissioner's decision to deny benefits. The court may set
25 aside the Commissioner's decision when the ALJ's findings are
26 based on legal error or are not supported by substantial evidence
27 in the record as a whole. Aukland v. Massanari, 257 F.3d 1033,
28 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen

1 v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v.
2 Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

3
4 "Substantial evidence is more than a scintilla, but less
5 than a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson
6 v. Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant
7 evidence which a reasonable person might accept as adequate to
8 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;
9 Smolen, 80 F.3d at 1279). To determine whether substantial
10 evidence supports a finding, the court must "'consider the record
11 as a whole, weighing both evidence that supports and evidence
12 that detracts from the [Commissioner's] conclusion.'" Aukland,
13 257 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th
14 Cir. 1993)). If the evidence can reasonably support either
15 affirming or reversing that conclusion, the court may not
16 substitute its judgment for that of the Commissioner. Reddick,
17 157 F.3d at 720-21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457
18 (9th Cir. 1995)).

19 20 VII.

21 DISCUSSION

22
23 Plaintiff contends the ALJ "erred in holding that
24 Plaintiff's disability ended on February 16, 2012." (Memorandum
25 in Support of Plaintiff's Complaint ("MSPC") at 2). Plaintiff
26 makes two specific challenges to the ALJ's decision. First,
27 Plaintiff argues that pursuant to Social Security Ruling ("SSR")
28 96-8p ("the Ruling"), the second RFC assessment that led to the

1 determination of non-disability is erroneous because "the ALJ
2 failed to provide a proper narrative discussion describing how
3 the evidence supports her conclusion that Plaintiff became able
4 to perform a limited range of light work on February 17, 2012."
5 (Id. at 3) (citing SSR 96-8p, 1996 WL 374184). Second, Plaintiff
6 claims that also pursuant to the Ruling, "the ALJ failed to
7 resolve the numerous ambiguities present in the medical evidence
8 that she relied on in reaching her decision." (Id. at 5).

9
10 The Court disagrees with Plaintiff on both grounds. The ALJ
11 provided substantial evidence to support her RFC assessment and
12 provided clear and convincing reasons for finding Plaintiff's
13 subjective testimony less than fully credible. To the extent
14 that the medical evidence after February 17, 2012 presented any
15 material ambiguities, the ALJ properly discussed and resolved
16 them with citations to substantial evidence from the objective
17 medical record. Accordingly, for the reasons discussed below,
18 the ALJ's decision must be AFFIRMED.

19
20 **A. The ALJ Adequately Supported Her RFC Assessment**

21
22 Plaintiff contends the ALJ did not properly support her RFC
23 assessment because the decision "relies on a handful of clinical
24 observations that may or may not indicate that Plaintiff's
25 condition improved" as of February 17, 2012. (MSPC at 3). The
26 Court disagrees, and finds the ALJ supported her RFC assessment
27 with extensive citation to and discussion of both medical and
28 nonmedical evidence contained in the record.

1 **1. SSR 96-8P And The Relevant Legal Standard**

2

3 The Ruling provides that the RFC assessment "is a function-

4 by-function assessment based upon all of the relevant evidence of

5 an individual's ability to do work-related activities," which

6 also "must include a narrative discussion describing how the

7 evidence supports each conclusion...." SSR 96-8p, 1996 WL 374184

8 at 3-7. In particular, the ALJ must "cit[e] specific medical

9 facts (e.g., laboratory findings) and nonmedical evidence (e.g.,

10 daily activities, observations)," and address "the individual's

11 ability to perform sustained work activities in an ordinary work

12 setting on a regular and continuing basis (i.e., 8 hours a day,

13 for 5 days a week, or an equivalent work schedule)." (Id. at 7).

14 In addition, the ALJ must "describe the maximum amount of each

15 work-related activity the individual can perform based on the

16 evidence available in the case record." (Id.).

17

18 When discussing cases in which subjective symptoms, such as

19 pain, are alleged, the RFC assessment "must include a discussion

20 of why reported symptom-related functional limitations and

21 restrictions can or cannot reasonably be accepted as consistent

22 with the medical and other evidence." (Id.). Similarly, when

23 considering medical opinions, "[i]f the RFC assessment conflicts

24 with an opinion from a medical source, the adjudicator must

25 explain why the opinion was not adopted." (Id.). "If a treating

26 source's medical opinion on an issue of the nature and severity

27 of an individual's impairment(s) is well-supported by medically

28 acceptable clinical and laboratory diagnostic techniques and is

1 not inconsistent with the other substantial evidence in the case
2 record, the adjudicator must give it controlling weight.” (Id.).

3
4 SSR rulings are binding on an ALJ. 20 C.F.R.
5 § 402.35(b)(1). When the ALJ fails to identify specific reasons
6 for the stated findings, supported by evidence in the case
7 record, the Court cannot affirm an ALJ’s determination “even if
8 the ALJ had given facially legitimate reasons for his . . .
9 finding, [because] the complete lack of meaningful explanation
10 gives [the Court] nothing with which to assess its legitimacy.”
11 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 884 (9th Cir. 2006).

12
13 **2. Substantial Evidence Supports The ALJ’s Finding**
14 **That Plaintiff Was Not Disabled Beginning February**
15 **17, 2012**
16

17 The Court finds the ALJ supported her finding that Plaintiff
18 was no longer disabled after February 17, 2012 with substantial
19 evidence. The ALJ provided evidence of Plaintiff’s improved
20 condition and continuing limitations as of February 16, 2012, and
21 also discussed how she reconciled her conclusions with any
22 conflicting evidence from Plaintiff’s own testimony or other
23 medical opinions.

24
25 As required by the Ruling, the ALJ cited to several
26 “specific medical facts” that show Plaintiff’s condition
27 improved. SSR 96-8p, 1996 WL 374184 at 7. The ALJ stated:
28

1 The evidence shows [Plaintiff] completed chemotherapy
2 in October 2011. [Plaintiff's] cancer went into
3 remission, and his condition has been stable since he
4 completed cancer treatments. Although [Plaintiff]
5 developed a deep vein thrombosis during the course of
6 his chemotherapy, by February 2012, [Plaintiff's]
7 blood thinners were discontinued. Additionally,
8 despite the fact that [Plaintiff] initially lost
9 weight before he began his chemotherapy treatments,
10 the record demonstrates he regained weight during and
11 after his treatment. At a follow-up appointment on
12 February 16, 2012, [Plaintiff] stated he had no
13 complaints; and physical examination revealed
14 generally unremarkable findings. Similarly,
15 diagnostic testing after February 2012[] revealed
16 generally normal findings.

17
18 (AR 21) (citations omitted). The ALJ went on to note that "[a]
19 PET scan performed in February 2012, demonstrated [Plaintiff] had
20 persistent, but nonmetabolically active lymph nodes" and
21 "[l]aboratory testing from February 16, 2012, revealed benign
22 findings." (AR 23, 453). Also, "[l]aboratory testing from May
23 and June 2012 showed [Plaintiff's] white blood count was slightly
24 elevated; but the results were otherwise unremarkable." (AR 23,
25 447). The ALJ finally noted that a July 30, 2012 PET scan
26 revealed Plaintiff "had a single left inguinal lymph node, with
27 low-grade metabolic activity that was not present in prior
28 studies" and a CT scan from the same day "reconfirmed that

1 several of [Plaintiff's] lymph nodes had significantly diminished
2 in size after chemotherapy." (AR 23-24, 644).

3
4 The ALJ also discussed relevant "nonmedical evidence," such
5 as Plaintiff's daily activities and the ALJ's own observations of
6 Plaintiff. SSR 96-8p, 1996 WL 374184 at 7. For example, the ALJ
7 noted that "during the hearing, [Plaintiff] admitted that as of
8 February 2012, he only sees his physician every three months."
9 (AR 21). Regarding Plaintiff's knee pain, which Plaintiff
10 alleged was severe following an unsuccessful surgery, the ALJ
11 observed Plaintiff "ambulate around the hearing room," and noted
12 that Plaintiff's "gait was normal and he did not use an assistive
13 device for ambulation." (AR 22). Moreover, the ALJ stressed
14 that Plaintiff admitted at the hearing "he was able to stand
15 and/or walk for over an hour, and he acknowledged he was able to
16 vacuum." (Id.). Plaintiff made similar statements during an
17 August 13, 2012 appointment, where he "admitted that he was able
18 to walk five to 10 blocks; he could climb stairs normally; and he
19 stated he had only occasional moderate pain in his knee." (AR
20 22, 638).

21
22 In addition, the ALJ properly considered "[Plaintiff's]
23 ability to perform sustained work activities in an ordinary work
24 setting on a regular and continuing basis ([such as] 8 hours a
25 day, for 5 days a week, or an equivalent work schedule)." SSR
26 96-8p, 1996 WL 374184 at 7. The ALJ also described "the maximum
27 amount of each work-related activity [Plaintiff] can perform
28 based on the evidence available in the case record." (Id.).

1 Specifically, the ALJ performed a separate analysis of steps four
2 and five in the five-step evaluation process after determining
3 Plaintiff's increased RFC. (AR 24-25). The ALJ concluded at
4 step four that Plaintiff was still unable to perform his relevant
5 past work as a construction worker. (AR 24). At step five, the
6 ALJ concluded Plaintiff could perform a limited range of
7 unskilled and light work. (AR 25-26).

8
9 The ALJ supported her findings at both steps by relying in
10 part on the testimony of Ms. Porter, a vocational expert. (AR
11 48-53). An ALJ may properly rely on the testimony of a
12 vocational expert where the ALJ poses a hypothetical
13 "contain[ing] all the limitations the ALJ found credible and
14 supported by substantial evidence in the record." Bayliss v.
15 Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005). Moreover, an ALJ
16 may rely on a vocational expert's testimony regarding the number
17 of relevant jobs in the national economy, as "[a]n ALJ may take
18 administrative notice of any reliable job information, including
19 information provided by a [vocational expert]." Id. at 1218
20 (citing Johnson v. Shalala, 60 F.3d 1428, 1435 (9th Cir. 1995)).

21
22 At step four, the ALJ confirmed with Ms. Porter that
23 Plaintiff could not perform his past work as a construction
24 worker. (AR 49). At step five, the ALJ next asked Ms. Porter
25 whether jobs existed in the national economy for an individual
26 with Plaintiff's age, education, work experience and RFC. (AR
27 48-49). The ALJ specified six different hypotheticals for Ms.
28 Porter to consider, ranging from jobs requiring light to medium

1 work; both with and without a sit/stand option; and accommodating
2 brief breaks each day and absences each week due to chronic pain
3 and ongoing medical treatment. (AR 48-52). Ms. Porter then
4 testified that an individual sharing Plaintiff's age, education,
5 experience and mental and physical limitations could perform
6 light, unskilled work with a sit/stand option, such as a cashier,
7 garment sorter, and production solderer. (AR 51). She testified
8 that Plaintiff could perform medium work, but also with the
9 opportunity for short daily breaks and weekly absences, as a
10 laundry laborer, hospital cleaner, and industrial cleaner. (AR
11 52). Finally, she testified that Plaintiff could perform light,
12 unskilled work, allowing for similar breaks and absences, as a
13 sales attendant, mail clerk, and router. (AR 52-53). Ms. Porter
14 also noted that all of these jobs existed in significant numbers
15 in the national economy and in Plaintiff's local economy. (AR
16 49-53). The ALJ accepted Ms. Porter's testimony and concluded
17 that "beginning February 17, 2012, [Plaintiff] has been capable
18 of making a successful adjustment to work that exists in
19 significant numbers in the national economy." (AR 26).

1 **3. The ALJ Cited Clear And Convincing Reasons For Finding**
2 **Plaintiff's Subjective Allegations Less Than Fully**
3 **Credible**

4
5 The ALJ emphasized that Plaintiff's subjective testimony
6 regarding the severity and limitations of his symptoms as of
7 February 17, 2012 "cannot reasonably be accepted as consistent
8 with the medical and other evidence," as required by the Ruling.
9 SSR 96-8p, 1996 WL 374184 at 7.

10
11 When assessing the credibility of a claimant, the ALJ must
12 engage in a two-step analysis. Molina v. Astrue, 674 F.3d 1104,
13 1112 (9th Cir. 2012). First, the ALJ must determine if there is
14 medical evidence of an impairment that could reasonably produce
15 the symptoms alleged. (Id.). Then, if there is, in order to
16 reject the testimony, the ALJ must make specific credibility
17 findings. (Id.). In assessing the claimant's testimony, the ALJ
18 may use "ordinary techniques of credibility evaluation." Turner,
19 613 F.3d at 1224 (internal quotations omitted). The ALJ may also
20 consider any inconsistencies in the claimant's conduct and any
21 inadequately or unexplained failure to pursue treatment or follow
22 treatment. Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.
23 2008). Additionally, the ALJ may discredit the claimant's
24 testimony where his normal activities can transfer to the work
25 setting. Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 600
26 (9th Cir. 1999). Here, there was medical evidence of an
27 underlying impairment. However, the ALJ articulated specific,
28

1 clear and convincing reasons for discounting Plaintiff's
2 testimony about the severity of her physical and mental symptoms.

3
4 The ALJ first summarized Plaintiff's allegations of symptom-
5 related functional limitations in his testimony and written
6 statements, noting specifically Plaintiff's claims of limitations
7 caused by the knee surgery, post-chemotherapy treatment, and
8 depression. (AR 22-23). The ALJ noted that "[Plaintiff
9 testified he had an unsuccessful right knee surgery in 2012, and
10 he continued to have severe knee pain . . . [Plaintiff] alleged
11 he continued to have severe residual fatigue and weakness after
12 he completed his chemotherapy . . . [and Plaintiff] and his wife
13 alleged he has severe depression." (AR 22).

14
15 Then, the ALJ contrasted those subjective symptoms with
16 evidence from the medical record to support the conclusion that
17 "the claimant's allegations concerning the intensity, persistence
18 and limiting effects of his symptoms are less than fully credible
19 since February 17, 2012." (AR 22). Regarding Plaintiff's knee,
20 the ALJ noted that although Plaintiff alleged his surgery failed
21 and still caused severe pain, he presented at the hearing with a
22 normal gait and without an assistive device. (AR 22). Moreover,
23 Plaintiff "admitted he was able to stand and/or walk for over an
24 hour, and he acknowledged he was able to vacuum." (Id.).
25 Plaintiff made similar statements at a post-operative appointment
26 and stated he only had occasional, moderate pain in the knee.
27 (Id.).
28

1 The Court agrees with the ALJ's finding that Plaintiff's
2 limited pursuit of mental health treatment undermined his
3 subjective testimony. The ALJ noted although Plaintiff received
4 medications for his depression, "there is no evidence [Plaintiff]
5 was ever hospitalized for his mental impairments and he admitted
6 he has not received ongoing mental health treatments," and that
7 "[o]n several occasions, [Plaintiff] described his depression as
8 "mild," and stated that his symptoms are infrequent." (AR 22-
9 23). Were Plaintiff's symptoms as severe as he claimed, it seems
10 likely that he would have needed and sought treatment more often
11 than the record reflects, as he sought treatment for his other
12 medical problems. Further, as a matter of law, the ALJ's
13 reliance on and citation to Plaintiff's failure to seek more
14 treatment, as part of the ALJ's evaluation of Plaintiff's
15 subjective testimony, was proper. See Tommasetti, 533 F.3d at
16 1039 (an ALJ may consider many factors in weighing a claimant's
17 credibility, including "unexplained or inadequately explained
18 failure to seek treatment") (internal quotation marks omitted).
19 Where, as here, "a claimant[] fail[s] to assert a good reason for
20 not seeking treatment," an ALJ may consider this inaction as
21 "cast[ing] doubt on the sincerity of the claimant's" subjective
22 testimony. Molina, 674 F.3d at 1113).

23
24 The ALJ discussed similar reasons for discrediting
25 Plaintiff's allegations of ongoing severe fatigue following
26 chemotherapy treatment. The ALJ noted "the positive objective
27 clinical and diagnostic findings since February 17, 2012 . . . do
28 not support more restrictive functional limitations than those

1 assessed herein." (Id.). The ALJ pointed to the opinion of
2 Plaintiff's treating physician, Dr. Andavolu, who noted
3 Plaintiff's cancer was in complete remission and that Plaintiff
4 was "doing well [and] . . . had no complaints" at a February 16,
5 2012 appointment. (Id.). The ALJ also supported her findings
6 with evidence of unremarkable physical examinations and PET-CT
7 scans ranging from February 2012 to late July 2012. (Id.). The
8 ALJ also used these findings to discredit the testimony and
9 written statements from Plaintiff's wife regarding Plaintiff's
10 condition. (AR 23).

11
12 The ALJ also properly discounted Plaintiff's wife's
13 testimony either because it was identical to Plaintiff's
14 testimony (which, for reasons stated above, was properly
15 discounted), her testimony was inconsistent with the medical
16 evidence, or for other reasons germane to the witness, i.e., that
17 as a lay witness she was not competent to render a diagnosis
18 about Plaintiff.

19
20 For the above reasons, the Court finds the ALJ amply
21 supported the determination that Plaintiff experienced medical
22 improvement and an increased RFC as a result. The Court also
23 finds the ALJ provided clear and convincing reasons for
24 discounting Plaintiff's subjective testimony, as well as that of
25 Plaintiff's wife.

1 **B. The ALJ Properly Discussed And Resolved Any Material**
2 **Ambiguities In The Evidence**

3
4 Plaintiff claims that the ALJ erred by finding non-
5 disability despite "numerous ambiguities [in the medical
6 evidence] which the ALJ's decision failed to address." (MSPC at
7 3). According to Plaintiff, the ALJ was obligated to, but did
8 not, "explain how any material inconsistencies or ambiguities in
9 the evidence in the case record were considered and resolved."
10 (MSPC at 3-5) (citing SSR 96-8p, 1996 WL 374184 at 7). The Court
11 disagrees that the ALJ failed to address any material
12 ambiguities, and finds that to the extent the medical evidence
13 created any ambiguities, the ALJ's decision addressed and
14 resolved them with substantial evidence.

15
16 An ALJ has a duty to develop the record "only when there is
17 ambiguous evidence or when the record is inadequate to allow for
18 proper evaluation of the evidence." Ludwig v. Astrue, 681 F.3d
19 1047, 1055 (9th Cir. 2012) (quoting Mayes v. Massanari, 276 F.3d
20 453, 459-60 (9th Cir. 2001). More specifically, that duty
21 requires the ALJ to recontact the treating physician to clarify
22 or amplify the reports if the medical evidence is insufficient.
23 Tonapetyan v. Halter, 242 F.3d 1144, 1151 (9th Cir. 2001).

24
25 If the ALJ fails to develop the record despite ambiguous or
26 inadequate medical evidence, the Ninth Circuit has held that
27 social security disability cases are subject to the same harmless
28 error rule as generally applies to civil cases. Ludwig, 681 F.3d

1 at 1054 (citing McLeod v. Astrue, 640 F.3d 881, 887 (9th
2 Cir.2011)). Plaintiff "need not necessarily show what other
3 evidence might have been obtained had there not been error, but
4 does have to show at least a 'substantial likelihood of
5 prejudice.'" McLeod, 640 F.3d at 888.

6
7 Here, Plaintiff claims the ALJ failed to resolve several
8 ambiguities, but does not explain how any of them had a
9 substantial likelihood of prejudicing Plaintiff, assuming any of
10 Plaintiff's observations identified ambiguities at all. (MSPC at
11 3-5). For example, the ALJ observed that "during several medical
12 appointments after February 17, 2012, Plaintiff reported no
13 subjective complaints and was found to have few ongoing symptoms
14 caused by his impairments," despite "other treatment records from
15 the time period in question indicat[ing] that Plaintiff continued
16 to suffer from symptoms and limitations caused by his Hodgkin's
17 lymphoma" (MSPC at 3). Plaintiff claims that during two
18 follow-up appointments after February 16, 2012, Plaintiff still
19 reported "symptoms of moderate intensity, which were aggravated
20 by walking and relieved by 'lying perfectly still.'" (Id. at 3-
21 4).

22
23 Similarly, Plaintiff contends that physical examinations
24 that found back pain and reduced range of motion during these
25 same appointments are evidence of unaddressed ambiguities that
26 nonetheless influenced the ALJ's decision. (Id.). Plaintiff
27 also alleges that despite the ALJ's overall finding of medical
28 improvement as of February 17, 2012, "[o]n August 14, 2012,

1 Plaintiff was diagnosed with peripheral neuropathy and prescribed
2 Neurontin (Gabapentin)." (Id. at 5). Lastly, Plaintiff points
3 to inconsistencies in the Cancer Center's "Interval History"
4 notes reflecting his appointments at the Center following
5 completion of his final chemotherapy treatment. Plaintiff notes
6 that the ALJ's finding of increased RFC recognized "by February
7 2012, [Plaintiff's] blood thinners were discontinued" but records
8 from the Cancer Center at that time state both that "Plaintiff
9 discontinued Coumadin 2 weeks ago" and that "he continues on
10 Coumadin." (MSPC at 4; AR 451).

11
12 The Court concludes that Plaintiff fails to demonstrate how
13 these observations demonstrate the medical record was inadequate
14 or insufficient to allow for a proper evaluation of Plaintiff's
15 condition as of February 17, 2012. Identifying evidence that is
16 contrary to an ALJ's decision does not by itself establish that
17 the decision is unsupported by substantial evidence or is
18 otherwise prejudicial to Plaintiff. See D.A.R.E. Am. v. Rolling
19 Stone Magazine, 270 F.3d 793, 793 (9th Cir. 2001) ("A bare
20 assertion of an issue does not preserve a claim[]") (internal
21 quotation marks omitted).

22
23 Moreover, even if Plaintiff's observations presented true
24 medical inconsistencies, such that the ALJ failed to address and
25 resolve them, the ALJ nonetheless provided enough evidence in
26 support of the non-disability finding that the errors would have
27 been harmless.

1 For example, the ALJ's RFC assessment provided several
2 specific references to objective medical evidence indicating that
3 Plaintiff experienced medical improvement as of February 17,
4 2012, all of which were noted "after careful consideration of the
5 entire record." Though Plaintiff points to Cancer Center's
6 allegedly inconsistent notations regarding Plaintiff's Coumadin
7 prescription, the ALJ's review of the "entire record" more
8 clearly indicates that no such inconsistency existed. Dr.
9 Andavolu's treatment notes from February 16, 2012 state that
10 Plaintiff's Coumadin prescription will be discontinued. (AR
11 451).

12
13 At subsequent medical appointments starting at least in
14 March, 2012, Plaintiff did not list Coumadin as one of his
15 medications. (AR 413). Coumadin is not listed under Plaintiff's
16 medications at appointments on March 5, March 28, April 4, May 9,
17 June 12, and August 20, 2012. (AR 413, 405, 402, 394, 384, 633).
18 Considering the ample other evidence supporting the ALJ's
19 conclusion that Plaintiff's medical condition improved, the Court
20 does not view the alleged ongoing presence of Coumadin as a
21 dispositive fact that Plaintiff continued to suffer from severe
22 fatigue and weakness after February 2012. If anything, such
23 evidence supports the inference that any lasting ambiguity over
24 Plaintiff's Coumadin prescription after February 2012 is caused
25 only by an oversight in Cancer Center's medical notes.
26 Accordingly, in light of the above evidence provided by the ALJ,
27
28

1 the Court finds the alleged inconsistencies identified by
2 Plaintiff to be harmless and insufficient to overcome the ALJ's
3 increased RFC assessment and non-disability finding.

4
5 In sum, the ALJ's RFC assessment properly satisfied the
6 narrative discussion requirement and provided substantial
7 evidence to resolve any inconsistencies raised by Plaintiff.

8
9 **III.**

10 **CONCLUSION**

11
12 Consistent with the foregoing, IT IS ORDERED that Judgment
13 be entered AFFIRMING the decision of the Commissioner.

14
15 DATED: November 13, 2014

16 /s/
SUZANNE H. SEGAL
17 UNITED STATES MAGISTRATE JUDGE

18
19 **NOTICE**

20 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,**
21 **LEXIS, OR ANY OTHER LEGAL DATABASE.**
22
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28